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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,825	07/30/2003	James R. Ellsworth	70869-0113US	7295
22902	7590	02/16/2006	EXAMINER	
CLARK & BRODY 1090 VERMONT AVENUE, NW SUITE 250 WASHINGTON, DC 20005			COOLEY, CHARLES E	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/629,825

Applicant(s)

ELLSWORTH ET AL.

Examiner

Charles E. Cooley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5 is/are pending in the application.
- 4a) Of the above claim(s) 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 0.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **FINAL OFFICE ACTION**

### ***Priority***

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence(s) of the specification or in an application data sheet by identifying the prior application by application number (37 CFR 1.78(a)(2) and (a)(5)). If the prior application is a non-provisional application, the specific reference must also include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

2. If applicant desires benefit of a previously filed application under 35 U.S.C. 119(e), specific reference to the earlier filed application must be made in the instant application. This should appear as the first sentence(s) of the specification following the title, preferably as a separate paragraph unless it appears in an application data sheet. The status of nonprovisional parent application(s) (whether patented or abandoned) should also be included. If a parent application has become a patent, the expression "now Patent No. \_\_\_\_" should follow the filing date of the parent application. If a parent application has become abandoned, the expression "now abandoned" should follow the filing date of the parent application.

If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference must be submitted during the pendency

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of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

**NOTE:** This objection is repeated because the petition for entry of an unintentionally delayed claim for priority filed 20 SEP 2005 has been considered and stands dismissed.

### ***Drawings***

3. The formal drawings filed 4 DEC 2003 are objected to because of the following informalities:

a. the subject matter of claims 1-2 and 4 and paragraphs [0023] - [0026] of the specification are poorly shown in the drawing Figures. Since this subject matter is an alleged point of novelty in the pending claims, it is suggested an enlarged view of the isolator support system should be provided.

Correction is required.

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

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### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

### ***Specification***

4. The abstract is acceptable.
5. The title is acceptable.

### ***Claim Objections***

6. Claim 3 is objected to because of the following informalities: The text of cancelled claims must not appear (note claim 4 and see 37 CFR 1.121). Appropriate correction is required.

### ***Claim Rejections - 35 U.S.C. § 112, second paragraph***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Newly presented claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The second paragraph of 35 U.S.C. § 112 requires a claim to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Under *In re Hammack*, 427 F.2d 1378, 166 USPQ 204 (CCPA 1970) and *In re Moore*, 169 USPQ 236 (CCPA 1971), claims must be analyzed to determine their metes and bounds so that it is clear from the claim language what subject matter the claims encompass. This analysis must be performed in light of the applicable prior art and the disclosure. The definiteness of the claims is important to allow others who wish to enter the market place to ascertain the boundaries of protection that are provided by the claims. *Ex parte Kristensen*, 10 USPQ 2d 1701, 1703 (BPAI 1989).

One of the purposes of 35 U.S.C. § 112, second paragraph, "is to provide those who would endeavor, in future enterprise, to approach the area circumscribed by the claims of a patent, with adequate notice demanded by due process of law, so that they may more readily and accurately determine the boundaries of protection involved and evaluate the possibility of infringement and dominance." *In re Hammack*, supra. As set forth in *Amgen Inc. v. Chugai Pharmaceutical Co., Ltd.*, 927 F.2d 1200, 1217, 18 USPQ2d 1016, 1030 (Fed. Cir. 1991).

The statute requires that "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." A decision as to whether a claim is invalid under this provision



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requires a determination whether those skilled in the art would understand what is claimed. See *Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 624, 225 USPQ 634, 641 (Fed. Cir. 1985) (claims must "reasonably apprise those skilled in the art" as to their scope and be "as precise as the subject matter permits.").

Words of degree often cause definiteness problems. See *Seattle Box Co. v Industrial Crating & Packing, Inc.*, 731 F.2d 818, 826, 221 USPQ 568, 573 (Fed. Cir. 1984). Whenever a word of degree impacts the interpretation of a claim, the specification must provide some standard for measuring that degree. One of ordinary skill in the art must be able to understand what is claimed when the claim is read in light of the specification. *Id.* In the present case, there is no standard for measuring what is meant by the newly presented claim language "to a location adjacent said rotor". Therefore, one of ordinary skill in the art would be unable to determine what at what location the support must be disposed to be "adjacent said rotor".

The phrase "to a location adjacent said rotor" in new claim 5 is a relative phrase which renders the claim indefinite. The term "adjacent" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The examiner has reviewed the specification and concludes the specification fails to provide a standard for ascertaining the requisite degree of the term "adjacent". At what location(s) can the support be mounted to the base to be considered "adjacent said rotor" and at what location(s) can the support the mounted to be considered not adjacent the rotor? The metes and bounds of claim 5 cannot be readily ascertained,



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rendering the claim vague and indefinite within the meaning of 35 U.S.C. 112, second paragraph.

Applicant argues in the remarks that “the invention locates the vibration isolating elements near the rotor”, however, akin to the term “adjacent”, the meaning of “near” is unknown within the scope of this prosecution. The examiner has no guidance from the instant disclosure to determine where the support must be mounted to the base to be considered “adjacent” or “near” the rotor. Furthermore, as discussed below, the rotor and drive mechanism couched in the “configured to” phrase of claim 5 is not considered to positively claim such elements of the centrifuge. Thus, claim 5 is reciting the orientation of the support with respect to an element (the rotor) that is not even within the scope of the claim. Therefore, with respect to claim 5, it is unclear from the claim language what subject matter the claim encompasses.

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. **Claims 1-2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (US 4,010,893).**

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With regard to claims 1-2, the patent to Smith et al. discloses, as seen below, a centrifuge comprising a base 36 having feet 40; an enclosure 21, 26, 27 mounting a motor 30; a rotor 45 mounted on the motor; an isolator support 42 secured to the base 36 and extending between the base and the enclosure; a vibration isolator 41 mounted to the isolator support 42 and to a portion 27 of the enclosure 21, 26, 27; wherein said vibration isolator 41 engages said enclosure at a location that is substantially aligned with the force applied by said rotor resulting from imbalance of said rotor (col. 3, lines 37-41 and col. 7, lines 51-56).

With regard to newly presented claim 5, the patent to Smith et al. discloses, as seen below, a centrifuge comprising a base 36 "configured to" be supported on a stationary surface under the feet 39 and 40, an enclosure 21, 27 "configured to" support a rotor 45 and a drive mechanism 30; a support 42 mounted to said base 36 and extending away from said base to a location adjacent (i.e., below said rotor and within the centrifuge structure), and a vibration isolator 41 mounted to said support 42 at said location and to said enclosure.

Although Smith et al. shows a rotor and drive mechanism, the claim language following "configured to" in claim 5 is merely an intended use of the enclosure and fails to positively recite a rotor and drive mechanism. Regarding the "configured to" language added to the amended claims, according to MPEP 2106, the subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope.

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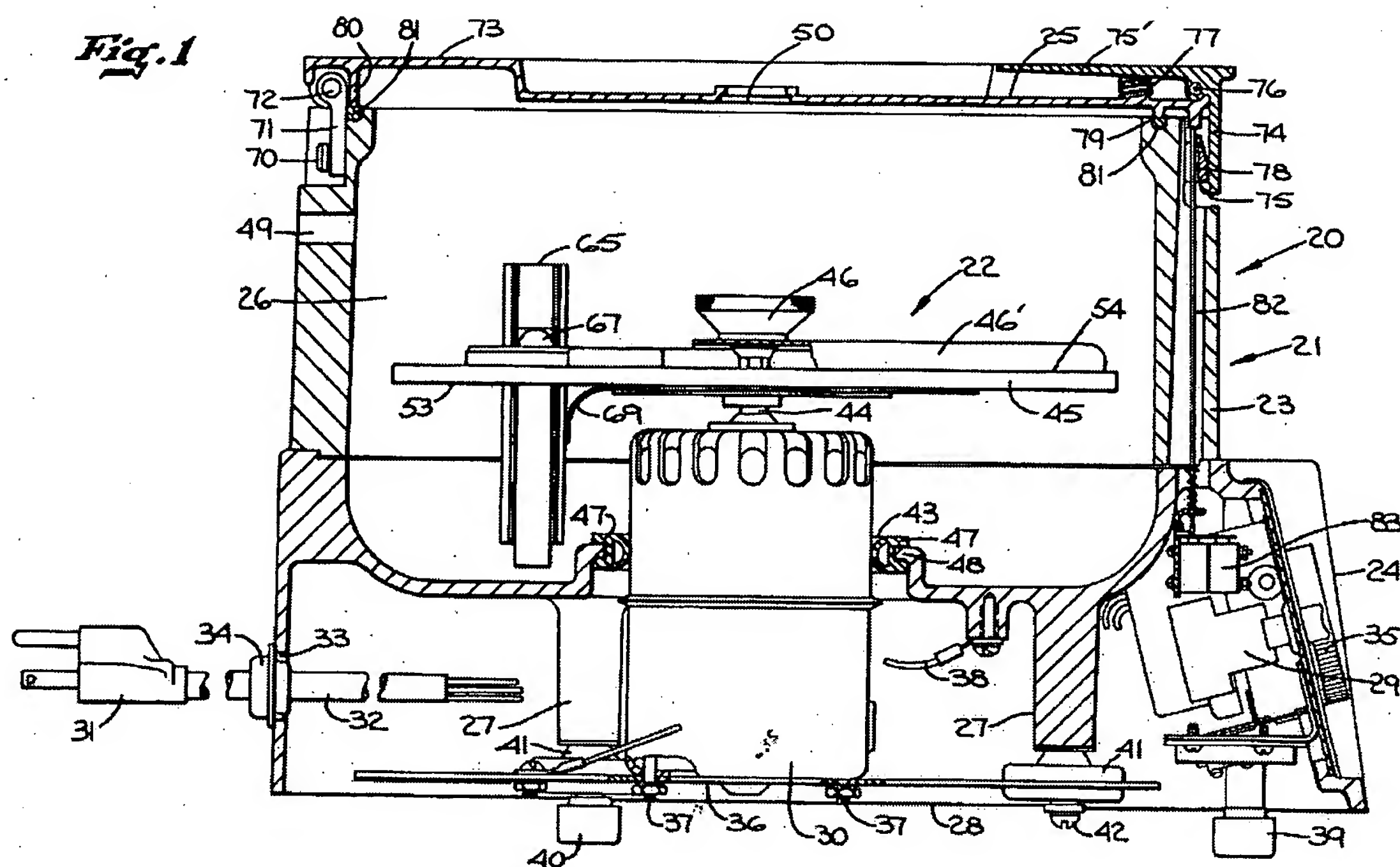
Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) "adapted to" or "adapted for" clauses,
- (C) "wherein" clauses, or
- (D) "whereby" clauses.

This list of examples is not intended to be exhaustive.

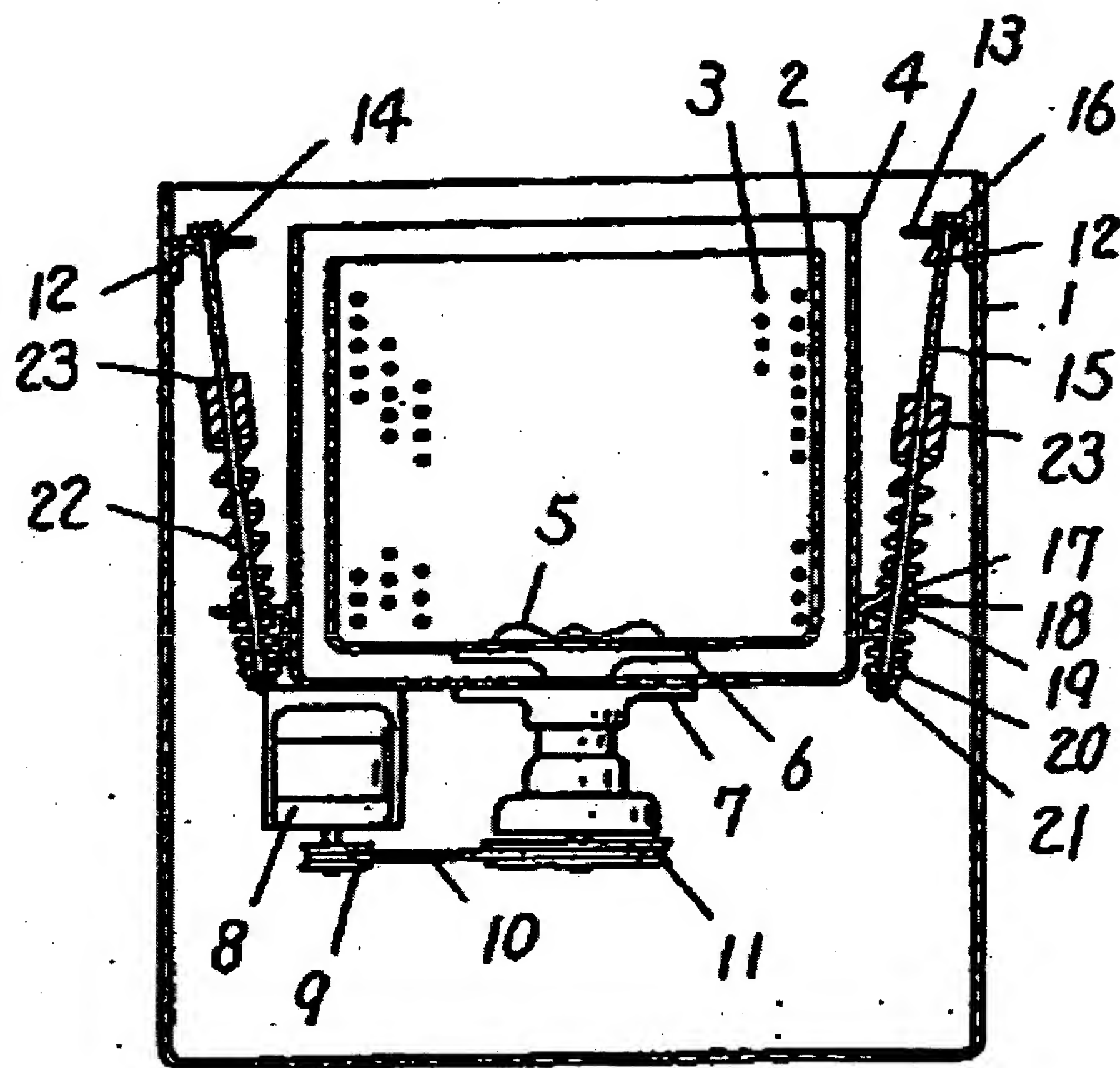
Accordingly, the examiner considers the language "an enclosure configured to" to not be a positive limitation but only requires the ability to so perform. The enclosure of Smith et al. actually does support a rotor and drive mechanism and thus clearly has the ability to accomplish the supporting function couched in the "configured to" phrase.

Even if the rotor and drive mechanism were lacking from the prior art of Smith et al., the enclosure of Smith et al. is deemed to be most capable of supporting a rotor, a drive, or a myriad of other elements.



**11. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by JP 62-236593.**

With regard to newly presented claim 5, JP 62-236593 discloses, as seen below, a centrifuge comprising a base 1 “configured to” be supported on a stationary surface, an enclosure 4 “configured to” support a rotor 2 and a drive mechanism 8; a support 13 and/or 15 mounted to said base 1 and extending away from said base to a location adjacent (i.e., laterally disposed with respect to the rotor or within the plane of rotation of the rotor 2), and a vibration isolator 22 mounted to said support 15 at said location and to said enclosure 4.

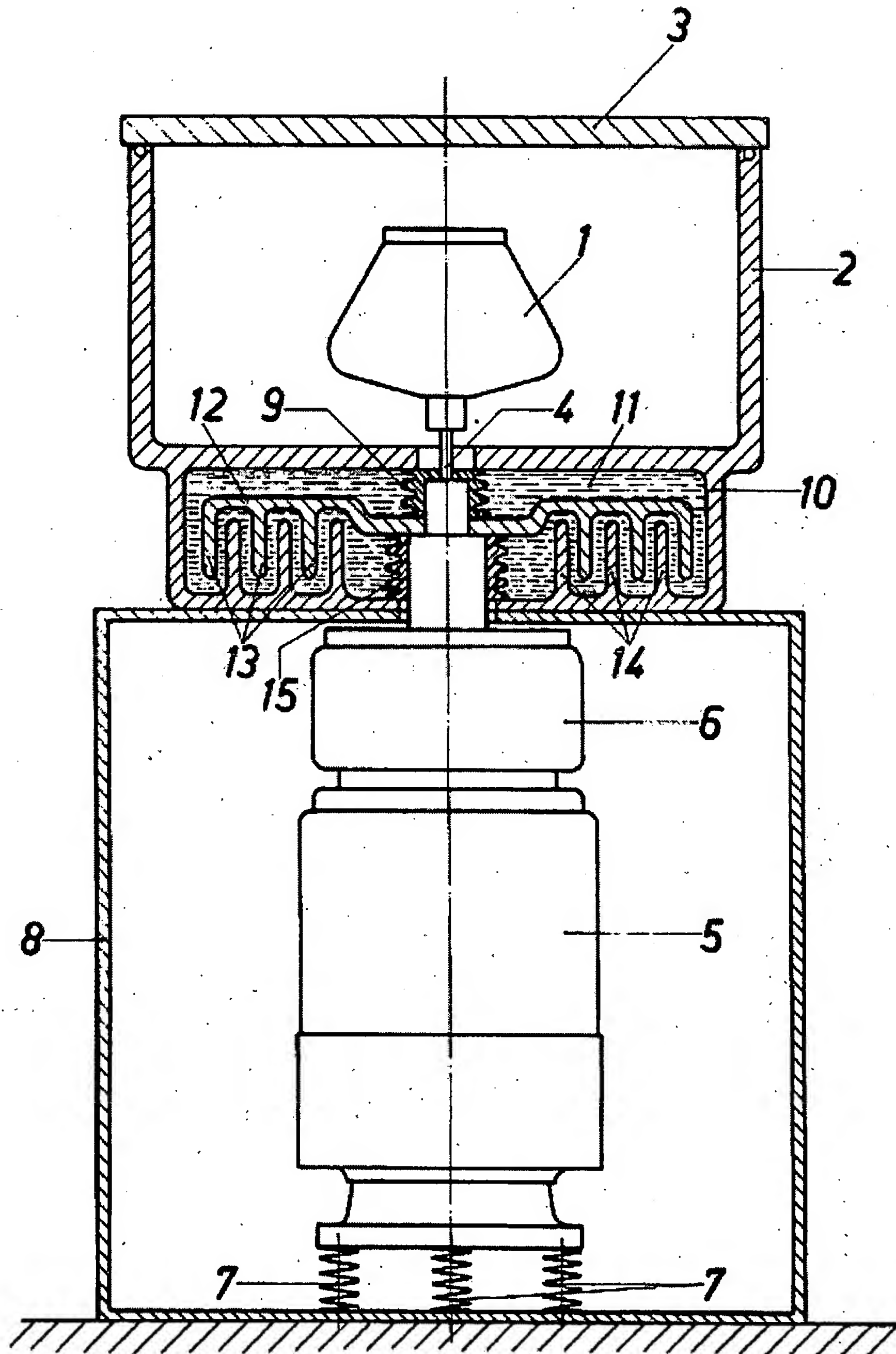


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**12. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Stallmann (US 3,606,143).**

With regard to newly presented claim 5, Stallmann '143 discloses, as seen below, a centrifuge comprising a base (below 7) "configured to" be supported on a stationary surface, an enclosure 8 "configured to" support a rotor 1 and a drive mechanism 5; a support 10 mounted to said base 8 and extending away from said base to a location adjacent (i.e., below the rotor 1), and a vibration isolator portion 11, 14 mounted to said support 10 at said location and to said enclosure 8.

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**Response to Amendment**

13. Applicant's arguments filed 18 OCT 2005 have been fully considered but they are not deemed to be persuasive.

Applicant is reminded that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Turning to the rejection of the claims under 35 U.S.C. § 102(b), it is noted that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*Sjolund v. Musland*, 847 F.2d 1573, 1581-82, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988)). Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1064 (Fed. Cir.), cert. denied, 488 U.S. 892 (1988); *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ

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385, 388 (Fed. Cir. 1984). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of properties that are inherently possessed by the prior art reference. *Verdegaal Brothers Inc. v. Union Oil co. of California*, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987), cert. denied, 484 U.S. 827 (1987). A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (*In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what Applicant is claiming, but only that the claims "read on" something disclosed in the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984) (and overruled in part on another issue), *SRI Intel v. Matsushita Elec. Corp. Of Am.*, 775 F.2d 1107, 1118, 227 USPQ 577, 583 (Fed. Cir. 1985). Also, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

With respect to the applied prior art under 35 U.S.C. § 102(b), the examiner has explicitly demonstrated how the references discloses each and every element set forth

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in the claims and how the pending claims read on the disclosures of the references, hence the rejection is considered proper.

Applicant apparently is construing the claims much too narrowly. As discussed above, the prior art shows each and every claimed element necessary to maintain the 102 rejections. Applicant states the references teach centrifuges of a different construction than the claimed invention but a different constitution does not negate rejection under 35 U.S.C 102 if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

*Verdegaal Bros. v. Union Oil Co. of California*, supra.

With respect to the remarks on claim 1, the claim language "wherein said vibration isolator engages said enclosure at a location that is substantially aligned with the force applied by said rotor resulting from imbalance of said rotor" is indeed broad in scope and hardly recites with any specificity where the vibration isolator engages the enclosure. Since the patent to Smith et al. at col. 3, lines 37-41 teaches that the vibration isolator functions to isolate parts of the centrifuge from rotor vibration (no doubt from forces applied by the rotor during operation), claim 1 falls victim to the teachings of Smith et al.

### **Conclusion**

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION. ANY RESPONSE FILED AFTER THE MAILING DATE OF THIS FINAL REJECTION WILL BE SUBJECT TO THE PROVISIONS OF MPEP 714.12 AND 714.13.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Charles Cooley". The signature is fluid and cursive, with a large initial "C" and a stylized "Cooley".

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

30 NOV 2005

(and as revised on 15 FEB 2006, following decision on petition)